IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

S.B. CIVIL FIRST APPEAL NO.181/1999
Smt. Sukhi Vs. Ramesh & Ors.

17.9.2007.

HON'BLE MR. JUSTICE DALIP SINGH

None – present.

In this appeal an application under order 41 rule 3A CPC read with Section 5 of the Limitation Act, 1963 was filed by the appellant on 5.1.1998 supported by an affidavit.

The said application came up for consideration before the court on 11.2.2005. In the said application it had been stated that the appellant was not served with the summon of the suit and by practicing fraud on the court a Vakalatnama and written statement was alleged to have been filed on behalf of the defendant appellant admitting the suit. No reply was filed to the said application. The said application was remitted by this court vide order dated 11.2.2005 for enquiry on the averments made in the application under order 41 rule 3A CPC filed by the appellant and it was directed that the learned trial court would hold the enquiry into the matter and if necessary to take necessary evidence of the parties and submit its' findings to this court within a period of six months.

After the order dated 11.2.2005 the matter was not listed in the court upto 6.9.2007 i.e. for two and half years as such on 6.9.2007 this court passed an order seeking explanation from the Registry as to why despite the order of this court dated 11.2.2005 the case had not been listed and also to seek an explanation from the trial court as to why findings had not been remitted within the time allowed.

After the order dated 6.9.2007 the Registrar (Admn.) in compliance of the order sought an explanation from the District Judge who has sent a reply dated 15.9.2007 stating therein that the appellant (defendant) had appeared personally before the learned District Judge and state that the parties were wanting to compromise the matter, though the learned District Judge had sought an extension of time vide letter dated 25.11.2005 and on the same date the parties are said to have appeared before the court of learned District Judge and submitted that the parties have compromised the matter. On that basis the learned District Judge has stated that the concerned clerk was directed to inform the High Court in this behalf. The explanation submitted in the letter dated 15.9.2007 reads as follows :

> अतः माननीय राजस्थान उच्च न्यायालय ने जो श्रीमती सुक्खी अपीलार्थी द्वारा प्रस्तुत प्रार्थना पत्र अन्तर्गत आदेश 41 नियम 3 ए सपठित धारा 5 लिमिटेशन एक्ट के प्रार्थना पत्र पर जाँच की जाकर और साक्ष्य ली जाकर निस्तारण हेतु प्रेषित किया था उसमें राजीनामा हो जाने के कारण कोई कार्यवाही शेष नहीं रही थी तथा दिनांक 25.11.2005 की आदेशिका में यह भी मेरे द्वारा अंकित किया गया कि जो दोनों पक्षों मे राजीनामा हुआ है उस विषय में माननीय राजस्थान उच्च न्यायालय जयपुर बैंच जयपुर को सूचना प्रेषित की जाए लेकिन संबंधित मंत्रालयिक कर्मचारी के द्वारा उपरोक्त आदेश की पालना में पत्र प्रेषित नही किया जिसके विरूद्ध पृथक से कार्यवाही की जा रही है उपरोक्त कारण से इस अपील में आदेशानुसार सूचना प्रेषिक नहीं की जा सकी ।
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> मेरे कार्यकाल की अवधि में सिर्फ दो ही पेशी 08.11.2005 तथा 25.11.2005 ही मेरे समक्ष हुई जिनमें एक पेशी पर पक्षकारान् ने राजीनामा पेश करने के लिए समय चाहा तथा अगली पेशी पर उनके द्वारा राजीनामा पेश किया गया । संबंधित लिपिक की गलती से सूचना समय पर प्रेषित नहीं की जा सकी ।

After the receipt of the aforesaid letter the record has been received from the court of learned District Judge, Dausa. I have perused the record. On page A8/1 the application dated 25.11.2005 signed by both the parties who had been identified by their respective counsel is available along with an affidavit of the defendant appellant Smt. Sukhi. In the said compromise application it

has been stated in para 3 by the defendant appellant that the judgment dated 27.8.1996 in suit No.10/1994 for the declaration of injunction may be upheld and that the appellant does not wish to prosecute the appeal and that the appeal may be disposed of as not pressed.

Learned District Judge vide order dated 25.11.2005 has recorded the fact of the above compromise and that the same has been admitted by both the parties who had been identified by their respective counsel.

On the record of the case received from the learned District Judge on page B-20 there is a letter dated 25.11.2005 sent by the District Judge, Dausa to the Registrar General seeking extension of time for Six months for disposal of this case remitted to it. The aforesaid letter is not on the file of S.B. Civil First Appeal No.181/1999 nor was the same placed before the court for necessary orders in that behalf. It is therefore directed that in future due care be taken that as and when such requests are received, by means of any communications to the Registry, the same be placed before the court on the judicial side without delay.

In view of the above compromise this first appeal is accordingly dismissed as not pressed.

(DALIP SINGH),J.

Ramchandrkhatri,PS